



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201308032**
Release Date: 2/22/2013

Date: November 28, 2012

UIL code: 501.32-00; 501.32-01; 501.33-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:
All Years

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038(CG) (11-2005)
Catalog Number 47632S

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224**

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Date: October 5, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Director
C = Religious/Cultural Organization
D = Ethnicity
E = State
F = Date
G = Organization

x = dollar amount

UIL:

501.32-00
501-32-01
501.33-00

Dear

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

This letter supersedes our letter dated July 10, 2012, and considers your protest.

Letter 4036 (CG) (11-2005)

Issues

- Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons described below.
- If you did qualify for exemption under section 501(c)(3), would you meet the requirements under section 501(q) of the Code? No, for the reasons described below.

Facts

You are an organization that counsels local homeowners about their options and rights with respect to foreclosure and loan modifications.

You were incorporated on F as a non-profit corporation under E law. Your Articles of Incorporation ("Articles") state, in Article II, that your specific purpose is to:

".. enable peoples and communities, through education and counseling, to achieve and keep their dream of homeownership and to attain and sustain a good quality of life."

Your Form 1023 ("application") indicates that you will hold seminars to inform the public about government programs for home mortgage assistance and the risks and benefits of foreclosure. The seminars will be publicized by email, personal telephone calls and newspaper advertisements. Attendees will be offered memberships in the organization for \$. Members will receive counseling and information about loan modifications and foreclosures.

The program is administered by B, who will be compensated in the future for services provided to you, as your only employee. B's duties include counseling homeowners with mortgage problems and assisting them in the loan modification process. Your submitted Mission Statement states that your objective is to work with different stakeholders and gatekeepers in the housing crisis for the reinvigoration and revitalization of local communities hard hit with foreclosures by intervening and partnering with banks, lenders and servicers to work out loan modifications. You plan to provide home preservation clinics in conjunction with local non-profits and lenders as well as holding seminars at a local community facility made available to non-profits at no charge. You have not held any seminars, clinics or workshops to date because the banks were not available to attend the foreclosure clinic. In the past your board members have attended, prior to your formation, clinics held by C in cooperation with local banks. Seminars, when held, will be comprised of a power point presentation by B. No materials will be distributed. You have submitted copies of the presentation, which is composed of 18 slides covering the various aspects of the foreclosure process.

You also provide foreclosure counseling utilizing materials from G. Foreclosure counseling is currently your only activity. The intake and information session constitute approximately % of your time while the actual modification process constitutes approximately %. Your clients are members of the regional D community and are known to you through personal relationships. Counseling takes place through face-to-face meetings. You typically meet with clients only once before recommending a particular approach. This meeting usually takes about 90 minutes. If the mortgage is incurable you make the client aware of their options such as a short sale or a deed in lieu of foreclosure. If the mortgage is curable, you have clients complete an intake form as well as an income and expense worksheet. A written budget analysis is provided to all clients. Finally, an authorization form is completed to allow you to contact the client's lender.

You charge a fee of x dollars for a successful foreclosure modification. The fee is only payable after the mortgage has been successfully modified. If a client is unable to pay you do not pursue collection and would refund a fee if requested in the client's interest. The fee amount was set because it is the amount that is reimbursable by HUD. You have serviced approximately 30 clients, about % of those receiving a successful loan modification paid your fee of x dollars. You submitted a copy of your fee waiver policy provided to clients. The policy states that your fees will be waived if a client is unable to pay, the totality of the circumstances will be considered including the following: unemployment compensation, household income and expenses, savings/assets and medical/personal care expenses. You plan to apply to HUD in the future for certification as an approved housing counseling agency to provide foreclosure counseling services. Your board members have attended courses provided by G to receive certification in foreclosure prevention and default counseling.

Law

Section 501(c)(3) of the Code provides that corporations may be exempted from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings inures to the benefit of any private shareholder or individual.

Section 501(q) of the Code provides that organizations which provide "credit counseling services" as a substantial purpose shall not be exempt from taxation under section 501(a) unless they are described in sections 501(c)(3) or 501(c)(4) and they are organized and operated in accordance with the following requirements:

- (A) The organization--

- (i) provides credit counseling services tailored to the specific needs and circumstances of consumers,
 - (ii) makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,
 - (iii) provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and
 - (iv) does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.
- (B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.
- (C) The organization establishes and implements a fee policy which--
- (i) requires that any fees charged to a consumer for services are reasonable,
 - (ii) allows for the waiver of fees if the consumer is unable to pay, and
 - (iii) except to the extent allowed by State law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.
- (D) At all times the organization has a board of directors or other governing body-
- (i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,
 - (ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other

than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and

(iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

- (F) The organization receives no amount for providing referrals to others for debt management plan services, and pays no amount to others for obtaining referrals of consumers.

Section 501(q)(2)(A)(i) provides that if an organization is described in section 501(c)(3) and is providing credit counseling services as a substantial purpose, it may be exempted from tax only if it does not solicit contributions from consumers during the initial counseling process or while the consumer is receiving services from the organization.

Section 501(q)(2)(A)(ii) provides that if an organization is described in section 501(c)(3) and is providing credit counseling services as a substantial purpose, it may be exempted from tax only if its aggregate revenues from payments by creditors of consumers of the organization attributable to debt management plan services do not exceed a specified percentage of total revenues.

Section 501(q)(4)(A) defines, for purposes of section 501(q), the term "credit counseling services" to mean (i) the providing of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit; (ii) the assisting of individuals and families with financial problems by providing them with counseling; or (iii) a combination of the activities described above.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("regulations") provides that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in

section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an applicant organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable," is used in section 501(c)(3) in its generally accepted legal sense and includes the relief of the poor and distressed or of the underprivileged.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides that the term "educational," as used in section 501(c)(3) of the Code, relates to:

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

In Rev. Rul. 69-441, 1969-2 C.B. 115, the Service found that a nonprofit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems was exempt under section 501(c)(3) of the Code. Its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications. It aided low-income individuals and families who have financial problems by providing them with individual counseling, and if necessary, by establishing budget plans. Under the budget plan, the debtor voluntarily made fixed payments to the organization, holding the funds in a trust account and disbursing the funds on a partial payment basis to the creditors. The organization did not charge fees for counseling services or proration services. The debtor received full credit against his debts for all amounts paid. The organization did not make loans to debtors or negotiate loans on their behalf. Finally, the organization relied upon contributions, primarily from the creditors participating in the organization's budget plans, for its support.

The Service found that, by aiding low-income individuals and families who have financial problems and by providing, without charge, counseling and a means for the orderly discharge of indebtedness, the organization was relieving the poor and distressed. Moreover, by providing the public with information on budgeting, buying practices, and the sound use of consumer credit, the organization was instructing the public on subjects useful to the individual and beneficial to the community. Thus, the organization was exempt from federal income tax under section 501(c)(3) of the Code.

The Service compared this holding with the holding of Rev. Rul. 65-299, which holds that a nonprofit organization formed to advise, counsel, and assist individuals in solving their financial difficulties by budgeting their income and expenses and effecting an orderly program for the payment of their obligations qualifies for exemption from federal income tax under section 501(c)(4) of the Code (rather than under section 501(c)(3)).

Outside the context of credit counseling, individual counseling has, in a number of instances, been held to be a tax exempt charitable activity. Rev. Rul. 78-99, 1978-1 C.B. 152 (free individual and group counseling of widows); Rev. Rul. 76-205, 1976-1 C.B. 154 (free counseling and English instruction for immigrants); Rev. Rul. 73-569, 1973-2 C.B. 178 (free counseling to pregnant women); Rev. Rul. 70-590, 1970-2 C.B. 116 (clinic to help users of mind-altering drugs); Rev. Rul. 70-640, 1970-2 C.B. 117 (free marriage counseling); Rev. Rul. 68-71, 1968-1 C.B. 249 (career planning education through free vocational counseling and publications sold at a nominal charge). Overwhelmingly, the counseling activities described in these rulings were provided free, and the organizations were supported by contributions from the public.

Rev. Proc. 86-43, 1986-2 C.B. 729, describes the methodology test the Internal Revenue Service uses to determine when the advocacy of a particular viewpoint or position is educational under sections 501(c)(3) of the Code and 1.501(c)(3)-1(d)(3) of the regulations. The revenue procedure states that the focus of section 1.501(c)(3)-1(d)(3) is on the method the organization uses to communicate to others, not the content of its communication. The method of communication is not educational "if it fails to provide a development from the relevant facts that would materially aid a listener or reader in a learning process." One factor indicating the method is not educational is as follows: "[t]he approach used in the organization's presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter." The remaining factors relate specifically to advocacy organizations and the "full and fair exposition" part of the regulation.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283, 66 S. Ct. 112, 90 L. Ed. 67 (1945), the Supreme Court held that the "presence of a single . . .

[nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In Consumer Credit Counseling Service of Alabama, Inc. v. United States, 78-2 U.S.T.C. 9660 (D.D.C. 1978), the court held that an organization that provided free information on budgeting, buying practices, and the sound use of consumer credit qualified for exemption from income tax because its activities were charitable and educational.

The Consumer Credit Counseling Service of Alabama is an umbrella organization made up of numerous credit counseling service agencies. These agencies provided information to the general public through the use of speakers, films, and publications on the subjects of budgeting, buying practices, and the sound use of consumer credit. They also provided counseling on budgeting and the appropriate use of consumer credit to debt-distressed individuals and families. They did not limit these services to low-income individuals and families, but they did provide such services free of charge. As an adjunct to the counseling function, they offered a debt management plan. Approximately 12 percent of a professional counselor's time was applied to the debt management plan as opposed to education. The agencies charged a nominal fee of up to \$10 per month for the debt management plan. This fee was waived in instances when payment of the fee would work a financial hardship.

The professional counselors employed by the organizations spent about 88 percent of their time in activities such as information dissemination and counseling assistance rather than those connected with the debt management programs. The primary sources of revenue for these organizations were provided by government and private foundation grants, contributions, and assistance from labor agencies and United Way. An incidental amount of their revenue was from service fees. Thus, the court concluded that "each of the plaintiff consumer credit counseling agencies was an organization

described in section 501(c)(3) as a charitable and educational organization." See *also*, Credit Counseling Centers of Oklahoma, Inc. v. United States, 79-2 U.S. Tax Cas. 9468 (D.D.C. 1979), in which the facts were virtually identical and the law was identical to those in Consumer Credit Counseling Service of Alabama, Inc. v. United States, discussed immediately above.

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), *aff'd*, 846 F. 2d 78 (Fed. Cir.) *cert. denied*, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization's argument that the adoption services merely complemented the health related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incident to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3). Easter House, 12 Cl. Ct. at 485-486.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (1991), the Court of Appeals upheld a Tax Court decision that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify for exemption under section 501(c)(3) of the Code because the organization was operated for a substantial nonexempt commercial purpose. The court found that the organization's activities were "presumptively commercial" because the organization was in competition with other restaurants, engaged in marketing, and generally operated in a manner similar to commercial businesses.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the "commerciality" doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax exempt purpose. As the court stated:

Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent

and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, inter alia, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations.

In Solution Plus, Inc. v. Commissioner, T.C. Memo. 2008-21, the Tax Court held that a credit counseling organization was not exempt under section 501(c)(3) because it was not organized and operated exclusively for educational or charitable purposes and impermissibly served private interests. The organization was formed by an individual with experience selling debt management plans. The founder and his spouse were the only member's of the organization's board of directors. The organization did not have any meaningful educational program or materials for providing to people who contacted the organization, and its financial education seminars for students constituted an insignificant part of the organization's overall activities.

The Court held that the organization's purposes were not educational because its "activities are primarily structured to market, determine eligibility for, and enroll individuals in DMPs." Its purposes are not to inform consumers "about understanding the cause of, and devising personal solutions to, consumers' financial problems," or "to consider the particular knowledge of individual callers about managing their personal finances." The Tax Court also held that the organization's purposes were not charitable because "its potential customers are not members of a [charitable] class that are benefited in a 'non-select manner * * * because they will be turned away unless they meet the criteria of the participating creditors."

The Tax Court further held the organization would operate for the private interests of its founder because the founder and spouse were the only directors, the founder was the only officer and employee, and his compensation was based in part on the organization's DMP sales activity levels. The organization was "a family-controlled business that he personally would run for financial gain, using his past professional experience marketing DMPs and managing a DMP call center." The Court further held that the organization's principal activity of providing DMP services, which were only provided if approved by a caller's creditors, furthered the benefit of private interests.

Finally, the Tax Court held that the facts in Credit Counseling Services of Alabama v. United States, 78-2 U.S.T.C. 9660 (D.D.C. 1978) "stand in stark contrast" because "the sale of DMPs is the primary reason for [Solution Plus's] existence, and its charitable and educational purposes are, at best, minimal."

Application of Law

Section 501(c)(3) of the Code sets forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). Section 1.501(c)(3)-1(a)(1). Although you satisfy the organizational test, you do not meet the operational test.

Operational Test

To satisfy the 501(c)(3) operational test, an organization must establish that it is operated exclusively for one or more exempt purposes. Section 1.501(c)(3)-1(c)(1) of the regulations. You failed to establish that you are operated exclusively for one or more exempt purposes.

Your Activities Are Not Educational

You are distinguishable from the organizations in Consumer Credit Counseling Service of Alabama, *supra*, and Rev. Rul. 69-441 by the methodology you use to conduct your counseling activities. You stated that you have not held any seminars, clinics or workshops to date because the banks were not available to attend the foreclosure clinics. Seminars, when held, will be comprised of a power point presentation by B, and no materials will be distributed. The only activity that you currently conduct is the provision of foreclosure counseling and the processing of loan modifications. The intake and information portion constitute approximately 20% of your time while the actual modification process constitutes approximately 80% of your time. You typically meet with clients only once for about 90 minutes before recommending a particular approach. If the mortgage is curable, you have clients complete an intake form as well as an income and expense worksheet. A written budget analysis is provided to all clients. However, unlike the organizations in Consumer Credit Counseling Service of Alabama, *supra*, and Rev. Rul. 69-441, *supra*, you do not offer counseling sessions that are structured primarily to improve your clients' understanding of their financial problems or their skills in solving them. You provided no evidence that your counselor does anything other than sit down with your clients to fill out the information that is needed to submit a statement of their financial condition to the lender. Communicating with a homeowner to fill out a financial worksheet and an intake sheet is not an educational activity because the communication does not provide a development from the relevant facts that would materially aid a listener or reader in a learning process. Rev. Proc. 86-43, *supra*.

You have not held any seminars, workshops or clinics to date. Your counseling sessions are used to solicit the information required to submit a statement of financial condition to the lender in an effort to obtain a loan modification. Finally, 80% of your time is spent on the negotiation process with the lender. Therefore, you failed to

establish that your interactions with clients provide instruction or training "useful to the individual and beneficial to the community" within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the regulations.

You do not operate a substantive on-going educational program. You do not dedicate any revenue to activities involving educational programs. You do not allocate any expenses to training employees. Like the organization in Solution Plus, *supra*, you did not provide evidence that you help clients develop an understanding of the cause of their financial problems or a plan to address their financial problems. You provided no evidence that you intend to establish long-term counseling relationships with your clients. Thus, your activities are not educational within the meaning of section 501(c)(3).

Your Activities Are Not Charitable

All of your time and resources are devoted to providing financial services for a fee to individuals who are not poor, distressed, or underprivileged. This is evidenced by the fact that your services are open to the general public and are not restricted based upon income or any other charitable criteria. This service does not provide relief to the poor and distressed or underprivileged within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations or serve any other purpose recognized as charitable.

The foreclosure counseling services you provide to individuals do not further charitable purposes. You represent that everyone is eligible for a review of their financial condition. While you do target your services to individuals in the D community, ethnicity is not the sole factor. Therefore, your services are not directed exclusively to the poor, distressed, or underprivileged. Accordingly, you are unlike the organizations described in Consumer Credit Counseling Service of Alabama, *supra* and Rev. Rul. 69-441, *supra*, which aided low-income individuals and families who have financial problems, thereby relieving the poor and distressed.

Unlike the organizations in Consumer Credit Counseling Service of Alabama, *supra*, and Rev. Rul. 69-441, *supra*, you charge fees for the majority of your services. "[P]rimarily providing services for a fee ordinarily does not further charitable purposes." Solution Plus, *supra*. Thus, you failed to establish that your activities are charitable within the meaning of section 501(c)(3) of the Code.

You Have a Substantial Nonexempt Commercial Purpose

The courts have developed guidelines intended to help discern whether an organization has a substantial nonexempt commercial purpose. See *e.g.*, B.S.W. Group, *supra*; Easter House, *supra*; Airlie, *supra*; Living Faith, *supra*. Generally, the factors proffered

by courts focus on the nature of the activities and how an organization conducts its business.

Your only activity consists of providing consulting services to individuals for a fee. You charge \$ to provide mortgage modification negotiation assistance. These fees do not entitle your clients to any educational programs or services. Your fee is based upon the amount that HUD reimburses housing counseling agencies for loss mitigation services. Adopting a fee structure that is based upon the amount that you can be reimbursed by a third party demonstrates that you are operating like a commercial organization, rather than a charitable or educational organization seeking to serve the public. Although, you have adopted a fee waiver policy, % of your clients have paid your fee. Thus, similar to the organization in Easter House, *supra*, the profit-making fee structure of your consulting services overshadows any of your other purposes. Your finance structure further demonstrates that you operate for a substantial nonexempt commercial purpose. You indicated that you will fundraise and solicit government grants. However, you have not received any government grants and you do not have a substantive plan to solicit grants in the future. There is also no evidence that you have received contributions or gifts from disinterested members of the public. Accordingly, you are unlike the organizations described in Consumer Credit Counseling Service of Alabama, *supra*, that received the bulk of their support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way (only an incidental amount of their revenue was from fees). Your operations are financed entirely by revenue earned from selling services to lenders, real estate investors, and homeowners and fees received from lenders for resolving loans without foreclosure. Receiving support primarily from consulting fees is indicative of a nonexempt purpose. Easter House, *supra*.

Like the organizations in Easter House, *supra*, Airlie, *supra*, and Living Faith, *supra*, you are in direct competition with commercial businesses because you conduct activities generally conducted for a profit. Accordingly, your commercial activities evidence a substantial nonexempt commercial purpose. The activities you identify as "educational" are merely incidental to your business of providing foreclosure consulting services for a fee. Thus, more than an insubstantial part of your activities are in furtherance of a nonexempt purpose, in contravention of section 1.501(c)(3)-1(c)(1) of the regulations. Therefore, you are not operated for an exempt purpose.

Private Benefit

An organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. See section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Your financial assistance to homeowners in refinancing their mortgages

directly benefits the homeowner by performing a service that they would otherwise have to provide themselves.

Therefore, you have not demonstrated that your operations serve a public rather than a private interest as required by section 1.501(c)(3)-1(d)(1)(ii).

Section 501(q) of the Code

An organization that provides educational information on financial topics or financial counseling to homeowners who are at risk of foreclosure is providing "credit counseling services" within the meaning of section 501(q)(4)(A) of the Code. Thus, even if you had established that you engage in such activities as a substantial purpose, to be exempt from taxation you must, in addition to complying with the requirements of section 501(c)(3), comply with the provisions of section 501(q).

You do comply with one provision of section 501(q) of the Code. An exempt credit counseling organization must establish and implement a fee policy which requires that any fees charged to a consumer for services are reasonable and allows for the waiver of fees if the consumer is unable to pay. Section 501(q)(1)(C). You charge a fee of x dollars for a successful loan modification. You have adopted a fee waiver policy for those clients unable to pay the x dollar fee.

You do not comply with other provisions of section 501(q) of the Code. You do not provide credit counseling services tailored to the specific needs and circumstances of consumers. Section 501(q)(A)(i). You do not provide educational information to the public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of credit. Nor do you assist individuals and families with financial problems by providing them with counseling. Section 501(q)(4)(A). You have provided no educational seminars or workshops to the general public and no educational materials are distributed to your clients receiving mortgage mitigation services. You spend % of your time negotiating with lenders and only % on your "counseling" sessions with clients. In addition, you also fail to meet the requirements of sections 501(q)(1)(D)(ii) and (iii), which generally specify the percent of voting power that is allowed to be vested in financially interested persons. You have four board members, one of whom will be compensated as an employee. Therefore, you do not meet the requirements under section 501(q).

Therefore, had you established that you otherwise met the requirements of section 501(c)(3), your failure to satisfy the requirements of section 501(q) would prevent you from being exempt from taxation under section 501(a).

Applicant's Protest

You assert that you meet the operational test for exemption under section 501(c)(3) of the Code for several reasons. You have held two seminars/workshops since your formation. You will pursue future seminars/workshops, but will need to streamline your schedule with partners and stakeholders such as banks. Your target audience is "mainly low income and underserved minorities." You intend to charge fees consistent with HUD guidelines. You indicated you are constrained by the lack of your section 501(c)(3) approval.

Your loan modification activity is only in support of your home ownership preservation program in conjunction with the government's Home Affordable Modification Program (HAMP), program's of G and other similar programs. Furthermore, your educational activities are the same as the HAMP program.

You stated that for homeless counseling and default counseling, you are not going to charge any fees, which is consistent with HUD guidelines. In addition, you will not solicit membership fees. Regarding private benefit, you stated that your default counseling and loss mitigation is consistent with HAMP and programs of G; therefore, they are not inconsistent with public policy or section 1.501(c)(3)-1(d)(1)(ii). Finally, regarding section 501(q), you intend to provide credit counseling services and educational information consistent with section 501(q). Also, the board member related to B will no longer serve as a board member and you plan to appoint two more board members.

Service Response to Applicant's Protest

Even though you claim to have held two seminars, you did not provide any detail on the nature of the seminars, content, presenters, audience, location, etc. In addition, even if you had provided details, the fact that two seminars were held has little bearing because your seminar activity consists of no more than % of your total time.

No additional information was submitted regarding your loan modification service to support your contention that it is educational. The fact that you utilize educational materials regarding a government program during your intake process does not negate the fact that % of the activity consists of the modification process which is not educational. In addition, you charge a fee for the service which is one of the indicia of a commercial activity absent other section 501(c)(3) purposes, regardless of whether or not HUD permits fee to be charged.

Your protest stated that your fees are consistent with HUD guidelines and therefore are valid. You then stated that you are not going to charge fees for default counseling. You did not explain what you consider to be default counseling nor did you state that you will

no longer charge the fees permitted by HUD. You currently charge for loss mitigation services. You will not charge membership fees. However, the fact that you do not charge fees for some services does not overcome the fact that you do charge fees for most all of your services. By the same token, the fact that your fees are consistent with HUD guidelines does not overcome other factors of commerciality and private benefit. The provision of loan modification services is not an inherently charitable activity.

You do not meet the requirements under section 501(q) because you fail to meet the requirements of sections 501(q)(1)(D)(ii) and (iii), which generally specify the percent of voting power that is allowed to be vested in financially interested persons. Even though B resigned from the board, B is still related to a board member and indirectly will provide a financial benefit to a voting board member. You currently have 3 board members. You provided no documentation about the appointment of any new board members. As such, one out of three voting board members has a financial interest. You also have not clearly finalized your intended fee structure so we are unable to document your compliance with the fee provisions of section 501(q).

The basis for this proposed denial remains unchanged. You do not meet the operational test under section 501(c)(3) because you are not operated exclusively for section 501(c)(3) purposes. You are operated for a substantial, non-exempt commercial purpose. Furthermore, you do not meet the requirements under section 501(q) as previously stated.

Conclusion

Based on the facts and information provided, you are not operated exclusively for exempt purposes because you are not educating your clients nor do you provide your services to the poor, distressed or underprivileged. You are organized and operated for commercial purposes. Any public purposes for which you may operate are only incidental to this primary nonexempt purpose. You have not demonstrated that you do not allow your net earnings to inure to private individuals. You do not serve a public rather than a private interest. Therefore, you are not described in section 501(c)(3). Even if you were operated exclusively for exempt purposes described under section 501(c)(3) of the Code, you do not meet the requirements described under section 501(q).

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning.

You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892. These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure

to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
P.O. Box 2508 Room 7-008
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Holly O. Paz
Director, Exempt Organizations
Rulings & Agreements

Enclosure, Publication 892